BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

INGLEWOOD UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019060317

ORDER GRANTING MOTION TO QUASH SUBPOENA DUCES TECUM

On June 24, 2019, Student filed a Due Process Hearing Request with the Office of Administrative Hearings naming Inglewood Unified School District. On August 6, 2019, Student's counsel issued a subpoena duces tecum to the custodian of records at Inglewood Unified School District directing the custodian to produce numerous documents.

Student's subpoena duces tecum requested all documents received or sent by 30 separate school district employees from June 7, 2017 until August 6, 2017 where Student or Parent's name was included. Inglewood Unified was given until August 30, 2019 to comply with document production. When Inglewood filed its motion to quash, the due process hearing was scheduled for September 10, 2019. Subsequently, the due process hearing was continued until November 5, 2019. No opposition was received from Student.

APPLICABLE LAW

In general, there is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) Rather, the IDEA provides parties with the right to present evidence and compel the attendance of witnesses at "a hearing conducted pursuant to subsection (f) or (k) of section 1415 of title 20 of the United States Code. (20 U.S.C. § 1415(h).) California provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings, but does not confer the right to prehearing discovery. (Ed. Code § 56505, subd. (e).)

In special education proceedings in California, "[t]he hearing officer shall have the right to issue subpoenas (order to appear and give testimony) and subpoenas duces tecum (order to produce document(s) or paper(s) upon a showing of reasonable necessity by a party)." (Cal. Code of Regs., tit 5 § 3082, subd. (c)(2).) The law accords prehearing access to two types of documents: (i) parents have the right to request and receive the pupil's educational records within five business days at any time (Ed. Code § 56504), and (ii) the parties are entitled to receive copies of all documents the educational agency intends to use at hearing, not less than five business days prior to hearing. (Ed. Code, § 56505, subd. (e)(7).)

Special education law does not specifically address motions to quash subpoenas or subpoenas duces tecum. In ruling on such motions, OAH relies by analogy on the relevant portions of Code of Civil Procedure section 1987.1 which provides that a court may make an order quashing a subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare, including protective orders.

DISCUSSION

Student's subpoena duces tecum requires compliance by producing the requested documents on August 30, 2019 well before the scheduled hearing dates of November 5, 2019. Special education law does not contain any provision authorizing this type of prehearing discovery.

ORDER

Inglewood Unified's motion to quash is granted.

IT IS SO ORDERED.

DATED: August 27, 2019

DocuSigned by:
Tiffany Gilmartin
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Tiffany Gilmartin
Administrative Law Judge
Office of Administrative Hearings